

REMARKS

Claims 1-41 remain in the application and stand rejected. Reconsideration of the rejection is respectfully requested in light of the following reasons.

Claim Rejection -- 35 U.S.C. § 102 (Kraenzel)

Claims 35, 36, 39, and 40 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,742,026 to Kraenzel et al. (“Kraenzel”). The rejection is respectfully traversed.

Claim 35 is patentable over Kraenzel at least for reciting: “wherein downloading the software application to the client computer in chunks comprises providing a configuration file to the client computer and downloading to the client computer the software application, which is listed in the configuration file.” This limitation of claim 35 is supported at least in FIG. 9 and page 19, lines 26-27, of the Specification. It is respectfully submitted that Kraenzel does not teach or suggest a configuration file that is downloaded to the client computer, the configuration file listing the software application. Kraenzel merely discloses general packet communication.

U.S. Patent No. 7,003,554 to Turner et al. (“Turner”), cited in other rejections, also does not teach or suggest such a configuration file. Turner is completely silent as to use of configuration files with a listing of software applications to download.

Therefore, it is respectfully submitted that claim 35 is patentable over Kraenzel or the combination of Kraenzel and Turner. Claim 36 depends on claim 35, and is thus patentable over Kraenzel or the combination of Kraenzel and Turner at least for the same reasons that claim 35 is patentable.

Claim 39 is patentable over Kraenzel or the combination of Kraenzel and Turner at least for reciting: “wherein receiving the software application in chunks comprises transmitting test data from the client computer to a server computer providing the software application to the client computer, determining a transmission time of the test data, and, based on the transmission time of the test data, adjusting a process of receiving

the software application in the client computer to conform to a bandwidth utilization value, the bandwidth being that of a network connection between the client computer and the server computer.” This limitation of claim 39 is supported at least in FIG. 10 and page 19, line 30 to page 20, line 14 of the Specification. Neither Kraenzel nor Turner teaches or suggests sending test data to a server computer, and based on the transmission time of the test data, adjusting the download process to conform to a desired bandwidth utilization.

Therefore, it is respectfully submitted that claim 39 is patentable over Kraenzel or the combination of Kraenzel and Turner. Claim 40 depends on claim 39, and is thus patentable over Kraenzel or the combination of Kraenzel and Turner at least for the same reasons that claim 39 is patentable.

#### Claim Rejection – 35 U.S.C. § 103 (Kraenzel)

Claims 37 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kraenzel. The rejection is respectfully traversed.

Claim 37 depends on claim 35 and claim 41 depends on claim 39. The patentability of claims 35 and 39 over Kraenzel (and Turner) has been explained above. Therefore, claims 37 and 41 are patentable over Kraenzel at least for the same reasons that their respective base claims are patentable.

#### Claim Rejection – 35 U.S.C. § 103 (Kraenzel and Turner)

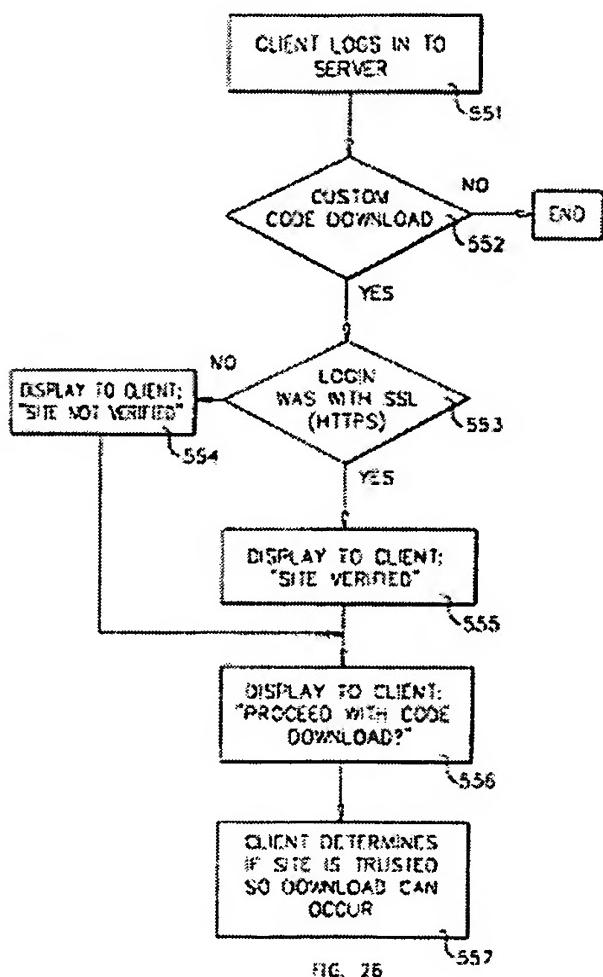
Claims 1-34 and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kraenzel and further in view of Turner. The rejection is respectfully traversed.

There are three requirements to establish a prima facie case of obviousness. First, there must be some suggestion or motivation to modify a reference or to combine references. Second, there must be a reasonable expectation of success. Third, the prior art reference or combined references must teach or suggest all the claim limitations. See MPEP § 2143. As will be explained below, the combination of Kraenzel and Turner does

not teach or suggest all the limitations of the rejected claims. Furthermore, there is no motivation to combine Kraenzel and Turner in the way proposed in the last office action.

1. Whether the client is suitable for receiving the plug-in application.

Claim 1 is patentable over the combination of Kraenzel and Turner at least for reciting: “**determining whether the client computer is suitable for receiving the plug-in application**” (emphasis added). According to the last office action, the combination meets this limitation in Kraenzel FIG. 26, step 551 (login progress). Kraenzel FIG. 26 is reproduced below for ease of discussion.



As shown in Kraenzel FIG. 26, the client logs in to the server in step 551. Step 551 is employed to determine whether the site has been verified as a secure site, not whether the client is suitable for receiving the plug-in.

Referring to FIG. 26, in accordance with the preferred embodiment of the invention, site identity is associated with the secure sockets (SSL) signature, and whether the connection to the web site has been made using HTTPS (secure) or HTTP (not secure). **If in step 553 it is determined that the user has connected to the server web site in step 551 using SSL, then the site identity and site trust queries are presented by stating (1) in step 555, the site has been**

**verified as being what it represents itself to be**, and (2) in step 556, asking "Do you trust the web site to download custom code to your client machine? If the user has not connected to the server web site using SSL, then the site identity and site trust queries are presented by stating (1) in step 554, the site has not been verified as being what it represents itself to be, and (2) again in step 556, asking do you trust the web site to download custom code to your client machine?

Kraenzel, col. 43, lines 46-61 (emphasis added)

That is, the Kraenzel client login step 551, cited in the last office action, allows for determination whether the site is what it purports to be, not whether the client is suitable to accept a plug-in. Kraenzel's login step has to do with the trustworthiness of the site, whereas claim 1 requires determination of whether the client computer is suitable for receiving the plug-in. It is respectfully submitted that the trustworthiness of a site and the suitability of a client computer to receive a plug-in are two different, separate determinations. For example, the site may be trusted and yet a plug-in application from the site is not suitable for the client. Suitability of the client computer to receive the plug-in has to do with whether the client computer meets certain criteria, whereas trustworthiness of the site has to do with whether the site is what it purports to be. One has to do with the state of the server, the other has to do with the state of the client.

Therefore, it is respectfully submitted that claim 1 is patentable over the combination of Kraenzel and Turner.

2. Downloading the plug-in application if the client computer is determined suitable to receive the plug-in.

Claim 1 is further patentable over the combination of Kraenzel and Turner at least for reciting: "downloading the plug-in application from the web site to the client computer via the network **if the client computer is determined to be suitable for receiving the plug-in application**" (emphasis added). The last office action suggests that the combination of Kraenzel and Turner meets this limitation of claim 1 in Kraenzel, FIG. 26, step 557.

As shown in Kraenzel FIG. 2, step 557 the client determines **if the site is trusted** so download can occur. That is, Kraenzel step 557 determines the security of the site, and does not determine whether the client is suitable to receive the plug-in application. As explained above, a site may be trustworthy and yet its plug-in may not be suitable for a client computer. What claim 1 requires is suitability of the client computer to receive the plug-in.

3. There is no motivation to combine Kraenzel with Turner.

Claim 1 is further patentable over the combination of Kraenzel and Turner at least for reciting: “downloading the plug-in application from the web site to the client computer,” “downloading the download manager application to the client computer via the network utilizing the plug-in application,” and “downloading the software application in chunks to the client computer via the network utilizing the download manager application.” That is, claim 1 requires the plug-in application to download a download manager, which in turn downloads the software application. As noted in the last office action, Kraenzel cannot meet this limitation because it directly downloads the application. The last office action suggests, however, that Kraenzel can be modified using the teachings of Turner to meet this limitation of claim 1. Applicants respectfully disagree with this conclusion as Turner itself directly downloads the application.

In Turner, the software delegate 112 is downloaded to the client computer (Turner, FIG. 4, step S4-3). The software delegate 112 is then used to download the application to the client computer (Turner, FIG. 4, step S4-4; col. 6, lines 35-40).

**At step S4-3, a software delegate is served by the server facility to the client computer.** Such a software delegate could be software delegate 112 as described in reference to FIGS. 1A and 1B. Processing proceeds to step S4-4. At step S4-4, **the software delegate initializes a download process** on the client computer.

Turner, col. 6, lines 35-40 (emphasis added)

As is evident from above, like Kraenzel’s plug-in, Turner’s software delegate **directly** downloads the application. Because Kraenzel’s plug-in directly downloads the

application and Turner's software delegate directly downloads the application, their combination must also teach direct downloading of applications. Neither Turner nor Kraenzel teaches using a plug-in to download a download manager, which in turn downloads the application. Such a download process is taught only in the present application, not in any of the references of record. Both Turner and Kraenzel teach the same thing – direct downloading. Modification of Kraenzel such that its plug-in downloads the software delegate, which in turn downloads the application is not supported by either disclosure. Such a modification may only be accomplished using the present application as a blueprint, and thus constitutes impermissible hindsight reconstruction.

Therefore, it is respectfully submitted that claim 1 is patentable over the combination of Kraenzel and Turner.

Claims 2-11 depend on claim 1, and are thus patentable over the combination of Kraenzel and Turner at least for the same reasons that claim 1 is patentable.

Claim 3 recites that a security feature **of the browser application** of the client computer requires that a user authorize the downloading of the plug-in application. In Kraenzel col. 34, lines 15-27, cited for support in the last office action, the plug-in application, **not the browser** as recited in claim 3, requires the user to indicate whether he trusts the site. Therefore, claim 3 is patentable over the combination of Kraenzel and Turner.

Claim 4 recites that the **security feature of the browser** includes displaying a message to the user that notifies the user to authorize the downloading of the plug-in application. In Kraenzel FIG. 26, steps 553 to 556, cited as supporting the rejection, the plug-in application, not a security feature of the browser, displays the message to the user. Therefore, claim 4 is patentable over the combination of Kraenzel and Turner.

Claim 5 recites **another page of the web site** is displayed to the user if the authorization to download the plug-in application is denied by the user. The last office action does not provide any evidentiary support in its rejection of claim 5, and thus appears to be taking an impermissible Official Notice. It is respectfully submitted that an

Official Notice is inappropriate in this case because displaying another **page of a web site** as a result of the user denying a plug-in application download is not a well known response to a user's rejection of a plug-in. Pages of websites are not typically used to convey messages to users who refuse downloads and other clickable offers, which are usually displayed as message boxes or pop-ups.

Claim 6 depends on claim 3, which depends on claim 1. Claim 3 recites that a security feature of the browser application requires that a user authorize the downloading of the plug-in application. Claim 6 further limits claim 3 by reciting that information about **whether or not** (i.e., both authorization and refusal) the user authorizes to download a plug-in application is stored in the client computer. The last office action rejects claim 6 by suggesting that it would have been obvious to store this information in a cookie. The last office action does not provide evidentiary support for this conclusion, and thus appears to be taking an impermissible Official Notice. It is respectfully submitted that an Official Notice is inappropriate in this case because cookies are not conventionally used to indicate whether a user authorized a download or not. Cookies are conventionally used to identify client computers, not whether or not a user authorizes a plug-in download.

Claim 7 recites that determining the suitability of the client computer for receiving the plug-in application includes determining whether the number of times the client computer has accessed the web site is under a predetermined threshold number. That is, claim 7 requires suitability of the client computer to receive the plug-in to be based on the number of times the client computer has accessed the web site. The last office action rejects claim 7 by suggesting that it is obvious to limit access attempts. The last office action does not provide evidentiary support for this conclusion, and thus appears to be taking an impermissible Official Notice. It is respectfully submitted that an Official Notice is inappropriate in this case because accessing a website is not an access "attempt" as conventional websites on the Internet allow the general public to access its web pages an unlimited number of times. Keeping track on the number of times the client computer has accessed the website and using that as an indicator of whether the

client computer is suitable to receive the plug-in is only taught in the present disclosure, not in any of the references of record.

Claim 8 recites that **another page of the web site** is displayed on the client computer if the client computer is determined to be unsuitable for receiving the plug-in application. That is, an alternate page of the web site is displayed to the user when the client computer is unsuitable for receiving the plug-in application. The last office action rejects claim 8 by suggesting that it is obvious to display “error messages” to indicate the user has not been successfully logged in. The last office action does not provide evidentiary support for this conclusion, and thus appears to be taking an impermissible Official Notice. It is respectfully submitted that an Official Notice is inappropriate in this case because error messages are typically displayed as message boxes, not as pages of a website.

Claim 9 recites that a license agreement is displayed on the client computer to the user prior to the downloading of the plug-in application. The last office action rejects claim 9 by suggesting that it is obvious to display license agreements prior to downloading of plug-ins. The last office action does not provide evidentiary support for this conclusion, and thus appears to be taking an impermissible Official Notice. It is respectfully submitted that an Official Notice is inappropriate in this case because conventional **plug-ins** are not downloaded in conjunction with a license agreement. Conventional plug-ins are downloaded into client computers without specifically asking the user to agree to a license agreement.

Claim 10 recites that the determination of the suitability of the client computer for receiving the plug-in application is carried out by **another web site**. That is, the suitability of the client computer to receive the plug-in is not carried out by the web site that provided the plug-in, but another web site. The last office action rejects claim 10 by suggesting that it is well known in the art to use a third party “to authenticate a user.” The last office action does not provide evidentiary support for this conclusion, and thus appears to be taking an impermissible Official Notice. It is respectfully submitted that an Official Notice is not appropriate in this case because authenticating a **user** is not the same as determining whether the **client computer** is suitable to receive a plug-in. User

authentication primarily requires the user to provide a password and such. On the other hand, whether or not a client computer is suitable to receive a plug-in depends on the state of the client computer, not the user. Furthermore, the last office action does not explain how this supposedly known “third party authentication” of users can be performed to determine whether a client computer is suitable to receive a **plug-in**. For example, note that in Kraenzel, the authentication is with regard to the trustworthiness of the site, not the user.

Claim 11 recites that the page of the web site launches a window which initiates the determination of the suitability of the client computer for receiving the plug-in application. The last office action rejects claim 11 by suggesting that it is well known in the art to “to provide login prompt via the same web page or in a separate window.” The last office action does not provide evidentiary support for this conclusion, and thus appears to be taking an impermissible Official Notice. It is respectfully submitted that an Official Notice is not appropriate in this case because login prompts tell something about **the user** (the user’s password, name) but not whether **the user’s client computer** is suitable to receive a plug-in. Using separate windows for login does not address how such a login can be used to determine if a client computer is suitable to receive a plug-in. The last office action is also not clear as to how these separate user logins operate to determine the suitability of the client computer to receive a plug-in when combined with Kraenzel and Turner.

Claims 12-22 and 23 are rejected under similar rationale given for claims 1-11. The patentability of claims 1-11 over the combination of Kraenzel and Turner has been explained above.

Claim 34 is rejected under similar rationale given for claims 1 and 7. The patentability of claims 1 and 7 over the combination of Kraenzel and Turner has been explained above.

Claim 34 is further patentable over the combination of Kraenzel and Turner at least for reciting: “wherein the plug-in application has instructions for downloading a download manager application to the client computer **from a second web site** via the

network" and "downloading a software application in chunks to the client computer via the network **from a web site other than the web site having the plug-in application**" (emphasis added). The combination of Kraenzel and Turner does not teach or suggest downloading a download manager from a second web site and downloading a software application from a web site other than the web site having the plug-in application (or software delegate in Turner).

Claim 38 is rejected under the same rationale given for claim 1. The patentability of claim 1 has already been explained above.

### Conclusion

For at least the above reasons, it is believed that claims 1-41 are in condition for allowance. The Examiner is invited to telephone the undersigned at (408)436-2112 for any questions.

If for any reason an insufficient fee has been paid, the Commissioner is hereby authorized to charge the insufficiency to Deposit Account No. 50-2427.

Respectfully submitted,  
Eric McKinlay et al.

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*Patricia Benedicto*

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Patrick D. Benedicto, Reg. No. 40,909  
Okamoto & Benedicto LLP  
P.O. Box 641330  
San Jose, CA 95164  
Tel.: (408)436-2110  
Fax.: (408)436-2114

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